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SUMMARY RECORD OF THE 1791st MEETING

Held at the Palais des Nations, Geneva,
on Friday, 22 October 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

later: Mr. BHAGWATI
(Vice-Chairperson)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic report of the Republic of Korea (CCPR/C/114/Add.1)

1. At the invitation of the Chairperson, Mr. Man-Soon Chang, Mr. Jong Hoon Kim, Mr. Yun-Sung Hwang, Mr. Kang-Il Huh, Mr. Sung-Wook Lee and Mr. Jae-Hoon Lim (Republic of Korea) took places at the Committee table.

2. Mr. Man-Soon CHANG (Republic of Korea), introducing his country's second periodic report (CCPR/C/114/Add.1), said that it dealt mainly with developments since the submission of the initial report (CCPR/C/68/Add.1) and covered the period from July 1991 to July 1996. Since the submission of the second report, further progress had been made with regard to civil and political rights. A new Government, the "Government of the people", had been sworn in in February 1998. The President, Mr. Dae-Jung Kim, was well known for his devotion to, and advocacy of, human rights and democracy. His inauguration had marked the first transfer of power by popular vote from the ruling party to the opposition since the founding of the Republic 50 years before and had made human rights a priority item on the national agenda. Guided by the principle of parallel development of democracy and the market economy, the Government had taken steps to bolster human rights.

3. In preparing the second periodic report, due attention had been paid to the questions raised during the consideration of the initial report and to the Committee's comments thereon (CCPR/C/79/Add.6). One of the main concerns expressed by the Committee related to the continued operation of the National Security Law (NSL). Given the security situation of the Republic of Korea as a divided nation, it could not simply do away with that Law. In the light of the Committee's views on the compatibility of some of its provisions with freedom of expression, however, and to prevent the Law from being exploited as a pretext for human rights abuses, his Government intended to amend it in a forward-looking manner. As a transitional measure, it had issued three directives in 1998 and 1999 which forbade law enforcement officials from interpreting the NSL in a broad manner. The number of NSL violators had decreased in 1998 by 12.3 per cent as compared with the previous year, and the number of those arrested had also dropped, by 27.5 per cent.

4. The "ideology conversion oath", which had been implemented for more than 60 years, had been abolished in June 1998 and replaced by the "law-abidance oath", which did not force prisoners to forfeit or change their political beliefs or opinions but requested of them an oath that they would comply with the law and not commit any further offences. The new oath was not a prerequisite for release but was to be used as a reference. In a special amnesty of 15 August 1999, 49 NSL offenders had been released, even though they had refused to sign the oath.

5. The Committee had also expressed concern at the use of excessive force by the police and the extent of the investigatory powers of the National Security Planning Agency. The report showed that the Republic of Korea had made strenuous efforts to prevent acts of torture or inhuman treatment by the

police. The Penal Procedure Code had been revised in December 1995 and now required the prosecutor to inspect more than once a month the detention facilities of police stations and investigating bureaux. If the prosecutor decided that an act of torture or inhuman treatment had taken place, he could order the instant release of arrested or detained suspects or transfer the case to the prosecutor's office.

6. The Republic of Korea had acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1995. Its initial report under the Convention had been submitted in February 1996 and had been considered by the Committee in November 1997. Since President Kim's inauguration, his Government had been attempting to stamp out harsh treatment in the investigative process, including the extraction of confessions, by developing scientific investigation facilities and techniques such as the genetic information bank established by the Supreme Prosecutor's Office.

7. During the revision, in January 1994, of the National Security Planning Agency Act, a provision had been introduced to indicate that its agents must neither arrest nor detain individuals through abuse of authority or negligence of the procedure prescribed by law. Violations of that provision were punishable by up to seven years' imprisonment. The Agency had been reborn under the current Government as the National Intelligence Service and was now subject to oversight by one of the 16 standing committees of the National Assembly.

8. Protection of the human rights of convicted and unconvicted prisoners was also an important issue raised during the consideration of the initial report. In January 1995, the Government had revised the Penal Administration Act, improving and updating a number of provisions. For example, provisions on punishment of prisoners for violations of regulations had been modified to emphasize humanitarian treatment and the educational goals of the penal regime. All the new measures were intended to protect the human rights of prisoners and help them adapt to society more easily.

9. Since July 1999, and in accordance with the principle of presumption of innocence, unconvicted prisoners had been allowed to wear civilian clothes during trials. A "meeting house for married couples" had been in operation on a trial basis since May 1999. Temporary leave and sleep-out policies were also being implemented for prisoners of good conduct. His Government had freed the remaining 17 long-term convicted prisoners in February 1999. They were all agents of the Democratic People's Republic of Korea convicted of crimes such as murder, destruction of property and espionage. They had been released on a purely humanitarian basis, even though they had refused to sign an oath to abide by the laws of the Republic of Korea.

10. Turning to the right to peaceful assembly, he said his Government had attempted to provide guidance for the peaceful settlement of disputes between workers and management, even in the case of illegal labour strikes, as long as they involved no physical violation or destruction. It was true that many workers had undergone much hardship during the restructuring following the economic crisis of 1998. Despite the Government's efforts, workers experiencing economic hardship had become violent, beating non-unionists and corporate officials with steel pipes and damaging factory facilities. The

Government had had no choice but to enforce the law in respect of workers engaged in illegal acts of violence. In doing so, however, it had exercised prudence and arrested only active participants and leaders. With the adoption in 1999 of the Act relating to the Establishment and Management of Teachers' Unions, the freedom of association of teachers was now assured.

11. The report described a number of measures taken by his Government to realize the principles of equality, measures which included enactment of the Basic Employment Policy Act, the Senior Citizens Employment Promotion Act and the Handicapped Employment Protection Act, and also the revision of the Special Education Promotion Act. Legal aid programmes were being carried out to protect the rights of citizens who were unable to sue for damages owing to unfamiliarity with the law or lack of funds to cover the cost of proceedings. Since 1 June 1996, legal aid, which had been limited to civil offences, had been extended in criminal cases to farmers, fishermen, workers in financial need, small business owners and others, provided that certain conditions were met.

12. In December 1998, the Republic of Korea had ratified the ILO Discrimination (Employment and Occupation) Convention (No. 111), thereby reflecting its strong commitment to the elimination of any discrimination against foreign workers. It had also amended the Foreigners (Land Acquisition) Act, in May 1998, to abolish discriminatory elements of the Act which had limited the ability of foreigners to acquire land in the Republic of Korea.

13. Turning to the Government's efforts to ensure equal rights for men and women, he said the Women's Development Act had been approved in 1995 to consolidate a legal basis for adequate institutional and financial measures in support of women's participation and gender equality at all levels of society. The Government had adopted targets for the participation of women in public office, facilitating the recruitment of a prescribed number of women into the public sector each year. The targets had been due to rise from 10 per cent in 1996 to 20 per cent in 1999.

14. Recognizing that domestic violence constituted a serious crime, the Government had approved the Prevention of Domestic Violence and Victim Protection Act in 1997. The Act held State and local autonomous bodies responsible for creating legal and institutional mechanisms to prevent domestic violence and protect its victims. The Gender Discrimination Prevention and Relief Act had been adopted in January 1999. It was designed to prevent discrimination in every sector of society but also guaranteed relief measures if a case of gender discrimination occurred.

15. The Republic of Korea had been faced with difficulties in advancing the status of women owing to the economic crisis across Asia. Male and female workers alike had suffered the impact of the economic downturn, further aggravated by the poverty of women and coinciding with an increase in family disputes, domestic violence and divorce rates. To address those problems, his Government had been providing free vocational training and livelihood assistance for unemployed women who were heads of households. It was also implementing projects to create jobs and awarding promotional grants to businesses which rehired female employees who had been laid off. January 1999

had seen the passage of the Women's Enterprise Assistance Act which promoted the establishment of businesses by women and guaranteed equitable conditions for such companies. It accorded priority to enterprises headed by women providing supplies to the Government and easy access to credit and information.

16. On 13 December 1997, the Government had amended the Nationality Act to do away with gender discrimination regarding the acquisition of nationality by birth. Under the old Act, a person could obtain Korean nationality only if his or her father had been a Korean national at the time of his or her birth, but that would now be possible also if the mother was a Korean national.

17. Concern had been expressed by the Committee during the consideration of the initial report about the high number of offences punishable by death. In 1990, his Government had revised the Aggravated Punishment for Specified Crimes Act and the Aggravated Punishment for Specified Economic Crimes Act so as to remove the death penalty from 15 provisions, including those relating to crimes of bribery, evasion of customs duty, etc. It had also revised the Criminal Code in December 1995, deleting the death penalty from provisions relating, inter alia, to inundation of residential structures leading to death or injury, obstruction of public traffic causing death or injury, obstruction of the use of public drinking water causing death or injury and death resulting from robbery. The Government would continue to endeavour to narrow the scope of crimes subject to capital punishment and would review the possibility of abolishing the death penalty in the long run.

18. The Human Rights Bill, which was to establish the national human rights commission, had been finalized by the Government in March 1999 and was now being debated by the National Assembly. The work of the national commission would strengthen the mechanisms for human rights protection and enhance public awareness of human rights.

19. At the time of the Covenant's ratification, the Republic of Korea had expressed reservations concerning article 14, paragraphs 5 and 7, article 22 and article 23, paragraph 4. Reservations to article 23, paragraph 4, had been withdrawn on 15 March 1991 and those to article 14, paragraph 7, on 21 January 1993. Great efforts had been made to raise public awareness of the Covenant by distributing the Korean translation of major international human rights treaties, by educating officials engaged in human rights-related work, and by holding seminars and workshops on human rights. His Government planned to hold a subregional workshop on human rights education in Seoul from 1 to 4 December 1999 in collaboration with the Office of the High Commissioner for Human Rights. The workshop would provide a good opportunity to explore practical ways of promoting human rights education.

20. Admittedly, there was room for improvement in his country's judicial system. The Government hoped that the suggestions and contributions to be provided by the Committee would help to expand human rights awareness. Since joining the United Nations in 1991, the Republic of Korea had participated actively in the promotion of human rights, and the report represented a continuation of the trend that had seen the country establish itself as a responsible member of the international community. He hoped that the report,

in conjunction with the additional information he had just provided, would assist the Committee in understanding the implementation of the Covenant in his country.

21. The CHAIRPERSON thanked the delegation for its introductory statement and drew attention to the list of issues to be taken up in connection with the consideration of the second periodic report, which read:

"Status of Covenant

1. Is it intended to establish an independent mechanism for monitoring human rights violations and for addressing complaints?

Discrimination on grounds of sex (arts. 3 and 26)

2. What measures has the State party adopted to protect women against domestic violence? What remedies are available to a woman who is subjected to domestic violence?

3. What measures have been taken to promote equality between men and women? What measures have been adopted to remedy the discriminatory situation suffered by women within the electoral system and their participation in political parties and in public service (see para. 64 of the report)?

4. Do women have access to means of family planning and are these means available to all women?

Right to hold opinions, freedom of expression (art. 19)

5. Given the Committee's concerns regarding the compatibility of the National Security Law with the Covenant, has the State party reviewed past convictions under this Law so as to ensure release of persons convicted for mere expression of their views? Is release of such persons conditional on signing a law-abiding oath? Please give details of the number of people convicted of offences under this Law since submission of the last report. What has been done by the State party to make the National Security Law compatible with the Covenant?

6. In regard to paragraph 199 of the report, please explain the specific grounds for censorship of films and video works by the Performance Moral Committee.

Freedom from torture, liberty of person and prohibition of arbitrary arrest and detention, administration of justice (arts. 7, 9 and 14)

7. What procedures exist for independent monitoring of the police and members of the National Intelligence Agency and for investigating complaints of torture and other abuses of power by these bodies? Please give details of investigations carried out and their results.

8. Is there an independent mechanism for monitoring prison conditions and for investigating complaints by prisoners and detainees? Please give details.

9. What has been done to investigate allegations of gross human rights violations during the period of military government that was in power until the late 1980s and to prosecute persons responsible for such violations?

10. In light of paragraphs 106 to 110 of the report, please explain the new conditions in the Law of 8 May 1991, as amended, concerning 'voluntary appearance', as well as the provisions of the Code of Criminal Procedure of 1 January 1997 regarding the issuance of arrest warrants and the length of pretrial detention. Are all persons under arrest afforded access to legal assistance?

11. Please explain use made of the Security Surveillance Law to monitor conduct of some released prisoners.

Right to privacy (art. 17)

12. Please explain the law, practice and judicial control of eavesdropping on private conversations, particularly of telephone conversations, by State authorities.

Freedom of assembly and freedom of association (arts. 21 and 22)

13. Please explain reasons for arrest of trade union leaders who organized strikes protesting government policy and comment on compatibility of these arrests with articles 21 and 22 of the Covenant. Are any trade union leaders still being detained?

14. What restrictions exist on the right to form or to join trade unions and the right to strike under the Trade Union Relations Adjustment Act and any other laws?

15. In relation to paragraphs 213-214 of the report, is the final decision whether to allow assemblies and demonstrations in the hands of the police? Is it possible to challenge a decision prohibiting an assembly or a demonstration before the courts?

Discrimination (art. 26)

16. What legislation exists to protect persons against discrimination in the public and private sectors?

17. What measures has the State party taken to protect migrant workers and other aliens from harassment and ill-treatment by the police and immigration offi ials? Does legislation exist to guarantee equality in conditions of employment between migrant workers and Korean residents?

Optional Protocol

18. What action has the State party taken following adoption of the Committee's Views in the following communications: 518/1992 (Sohn case), 574/1994 (Kim case) and 628/1995 (Park case)?

Dissemination of information about the Covenant (art. 2)

19. Please indicate the steps taken to disseminate information on the submission of the report and its consideration by the Committee, in particular, on the Committee's concluding observations. Furthermore, please provide information on education and training on the Covenant and its Optional Protocol provided to government officials, schoolteachers, judges, lawyers and police officials."

22. Mr. Jong Hoon KIM (Republic of Korea) said the subject of disabled persons would be taken up later, but he wished to confess that his delegation was linguistically handicapped, Korean not being an official language of the United Nations. The delegation was further handicapped by the absence of a member of the governmental commission for women's affairs.

23. Replying to question 1 of the list of issues, he said a Human Rights Bill to establish an independent mechanism for monitoring human rights had been submitted to the National Assembly in April 1999. The National Assembly had had a public hearing and the Bill was now under discussion in its Judiciary Committee. In preparing the text, the Government had closely followed the guidelines in the United Nations handbook on national human rights institutions. It had paid close attention to the legislative examples and practical experience of several other countries where human rights commissions and ombudsmen were already in place. The Office of the High Commissioner for Human Rights had also provided information and advice.

24. During the public hearing, a wide range of views had been expressed on the Bill and a heated debate had ensued. The Government welcomed that variety of opinions because it reflected the pluralism of a democratic society. The legal status of the human rights commission envisaged under the Act was to be that of a corporate body, since that was seen as the best way of ensuring its independence. It would be made up of nine commissioners appointed by the President, three of them to be recommended by the Speaker of the National Assembly and three by the Chief Justice. Their tenure and status were guaranteed by the Act. The chief commissioner would be able to appoint and discharge staff members autonomously, without government intervention. The status of staff would be guaranteed in a manner equivalent to that of their counterparts in government service. The budget would be furnished by the Government, but government supervision of the commission's operations had been all but excluded by the importance attached to its independence. The Government's efforts to secure the commission's independence and prevent any official interference, particularly by the Minister of Justice, were deemed to be fully in compliance with the recommendations in the United Nations handbook.

25. The Bill defined human rights as the freedoms and rights of a human being which were guaranteed by the Constitution and laws or recognized by

international human rights treaties ratified by the Republic or by international customary law. The commission's main functions would be to provide education on and publicize human rights, to undertake research and make recommendations on laws, systems, policies and practices in the field of human rights, and to investigate and remedy human rights violations. Its jurisdiction covered investigation of unlawful arrest, detention or torture by law enforcement or prison officers and could be extended, by an umbrella clause, to the investigation of any coercive acts or the obstruction of an individual's exercise of personal rights. The Bill contained a penalty clause providing that hindering the exercise of the functions of a commissioner or staff member would constitute the crime of obstruction of official duty as prescribed in the Criminal Code. Persons who refused to appear or submit materials, including documents, provided false documentation or materials or obstructed an on-site visit by a commissioner would be liable to a fine of approximately US$ 10,000.

26. Mr. Kang-Il HUH, responding to questions 2 to 4 on discrimination on grounds of sex, said that in an attempt to eliminate domestic violence and protect victims, the Government had enacted two laws in December 1997. The Special Act for the Punishment of Domestic Violence stipulated that employees of educational, medical, welfare and child-care facilities had a responsibility to report domestic violence to investigating agencies. Police officers who received reports of ongoing domestic violence should immediately go to the scene and take the necessary action. Such action included the restraining of acts of violence, the investigation of the crime and the delivery of the victim, if he or she agreed, to a domestic violence counselling centre or protection facility. Other actions included the transfer of a victim who needed immediate medical treatment to a medical facility and informing victims of their right to file a motion for temporary measures, such as separation or prohibition of encroachment by the offender within 100 metres of the victim's residence or workplace.

27. The second law adopted in December 1997, the Prevention of Domestic Violence and Victim Protection Act, held State and local autonomous bodies responsible for creating legal and institutional mechanisms to prevent domestic violence and protect its victims. It required them to establish and operate counselling centres and custodial care facilities for victims of domestic violence and to support comparable facilities operated under private auspices. As of 31 August 1999, 65 counselling centres and 14 protection facilities had been available for victims of domestic violence. A budget of approximately US$ 470,000 had been allocated to support such centres and facilities, and the Government planned to increase that support in the future. A 24-hour hot line had been established nationwide and training sessions had been conducted on an extensive scale for law enforcement officers to ensure effective implementation of the Act.

28. Mr. Jong Hoon KIM (Republic of Korea) drew the Committee's attention to a booklet issued by the Presidential Commission on Women's Affairs which listed the addresses and telephone numbers of all protection facilities and reporting centres around the country. The booklet had been distributed nationwide.

29. Mr. Kang-Il HUH (Republic of Korea), replying to question 3, said his Government was giving priority to the promotion of women's rights. The Presidential Commission on Women's Affairs had the task of monitoring the implementation of women's programmes. In addition, a "master plan" had been launched in 1998 to promote the development and economic empowerment of women. With a view to improving the status of women and their participation in society, a Women's Development Fund had been established in 1997, which aimed to raise US$ 70 million by 2002. A Gender Discrimination Prevention and Relief Act had been approved in January 1999, making the Presidential Commission responsible for investigating allegations of gender discrimination. It would determine whether or not a particular case constituted discrimination, and would mediate in gender-related disputes, as well as recommending measures to rectify inequalities. Any unjustified interference in a gender discrimination investigation was punishable by a fine or by imprisonment for up to two years; persons who refused to give evidence in such cases could be charged with negligence and fined.

30. New policies were likewise being developed to expand women's participation in politics. In the local elections of 1998, 34 candidates out of a total of 108 had been female. A policy aimed at increasing the representation of women in public service had been introduced in 1996, and the target was expected to rise to 20 per cent by the end of 1999 and 30 per cent by 2002. In April 1999, a strategy specifically designed to promote the status of women public servants by the year 2000 had been launched.

31. Mr. Jong Hoon KIM (Republic of Korea), on the question of target percentages for the participation of women in public service, said there had in fact been complaints from male candidates that to set such a high female quota constituted a kind of reverse discrimination which militated unfairly against them. The Government was nevertheless convinced of the need to take affirmative action.

32. Another initiative had been the Women's Enterprise Assistance Act of January 1999, which gave businesses run by women priority in government procurement and allowed them easier access to bank loans.

33. Mr. Kang-Il HUH (Republic of Korea), in response to question 4, said his Government encouraged the voluntary practice of family planning by individual families, although those living on low incomes and in rural areas received financial subsidies. In 1999, the Government had allocated US$ 456,000 to cover 50 per cent of the costs of contraceptive provision. Where necessary, local autonomous bodies would meet the cost of distributing contraceptive devices out of their own budgets.

34. Mr. Jong Hoon KIM (Republic of Korea) pointed out that in 1960 the rate of population increase had been as high as 3.01 per cent. Thanks to an intensive family planning campaign initiated by the Government, it had fallen to 1.7 per cent by 1975 and to 1.57 per cent by 1980. The practice of withdrawing tax benefits from families with more than three children had now been abolished, but despite that the rate of increase was now down to 0.95 per cent.

35. Mr. Yun-Sung HWANG (Republic of Korea), replying to question 5, said that when Korea had been liberated in August 1945, the country had been divided between the Soviet forces in the north and the United States forces in the south. On 1 December 1948, the National Security Law had been enacted in an effort to counter social disorder and to protect South Korea from the threat of communism. In 1950, the outbreak of the Korean war, which had claimed over 3 million lives, had demonstrated that fear of that threat had been well founded. Although South and North Korea had since signed a peace treaty, there had been countless small-scale conflicts along the demarcation line over the past five decades, including an armed infiltration in 1997. That history explained why the Korean people accepted the need for the National Security Law.

36. Nevertheless, human rights groups had had occasion to challenge the unduly broad way in which the Law was being enforced. Accordingly, the President had taken action to prevent any possible infringement of human rights by announcing a series of amnesties between March 1998 and August 1999, under which 255 persons convicted for violating the Law had been released and 32 had had their sentences commuted. The law-abidance oath that in the past had had to be signed by convicted persons as a condition for their release was simply a statement that whatever opinions they might hold, their actions would be compatible with the law. Following the amnesty, however, the signing of the oath was no longer a prerequisite for release.

37. Prudence was now the guiding principle in applying the Law, and as a result the number of charges brought under it had decreased by 27.5 per cent as compared to 1998, and the number of prosecutions by 53.6 per cent. In 1999, up to 20 October, a total of 117 persons had been charged under the Law, of whom 25 had been convicted and 92 were still undergoing trial proceedings. It should be noted that those figures were for the entire period since the Law had been enacted, and not merely the period since the ratification of the Covenant.

38. Some of the provisions of the Law, notably article 7, which had been criticized by human rights groups as being too broad and lacking specificity, were currently being revised in a process which included public hearings. The prudent application of the law under the current regime, coupled with the establishment of the national human rights commission, was clear evidence that the Government was dedicated to the preservation of civil liberties.

39. Mr. Jong Hoon KIM (Republic of Korea), in reply to question 6, said that the Performance Moral Committee no longer existed. In October 1996, the Constitutional Court had decided that examination of films prior to public showing amounted to censorship and was therefore unconstitutional. The Performance Act had been amended in February 1997 and a new body set up with the task of simply assigning films appropriate ratings. An amendment to the Motion Picture Act was envisaged, allowing even unrated films to be shown at certain designated cinemas.

40. Mr. Sung-Wook LEE (Republic of Korea), in response to questions 7 to 11, said that complaints of illegal conduct by police or members of the National Intelligence Agency could be freely made, and would be followed up by a standard investigation process. If a complaint of abuse of power by

government officials or of illegal arrest or torture by police or prison officers was rejected by the public prosecutor, the complainant could appeal to a higher court, and eventually to the Constitutional Court. The Human Rights Bill now under consideration provided for all human rights violations by the authorities to be dealt with by a national human rights commission.

41. In response to question 8, he said that a number of steps had been taken to improve prison conditions. Rooms for interviews with lawyers had now been installed in all public prosecutors' offices, and prisoners with records of good behaviour were permitted the use of a telephone. Longer meetings with family members had been granted, and inmates were allowed to subscribe to newspapers and watch television. The Government planned to introduce correctional institutions operated by private persons, and to restrict the wearing of handcuffs and prison uniforms at court hearings.

42. Regular inspections, as well as visits by judges and public prosecutors, were made to check on prison conditions. Prisoners were entitled to present a sealed petition to the Minister of Justice, and to have a written answer from the Minister delivered to them in person.

43. Referring to question 9, he said that those who had resorted to violence in quelling the democracy movement of 18 May 1980 had been punished. Those who had taken part in the suppression of the movement had been charged with rebellion and bribe-taking and indicted. However, they had served only two years of their sentence and had then been released in the interests of national harmony.

44. On question 10, he said that, according to article 12 of the Constitution, a warrant issued by a judge must be presented in cases of arrest, detention, seizure or search. However, where a suspect was apprehended in flagrante delicto or was suspected of committing a crime punishable by imprisonment for three years or more, the authorities could request an ex post facto warrant. Any person who was arrested or detained had the right to prompt assistance by counsel, and the right to request the court to review the legality of his arrest or detention.

45. As to the length of pre-trial detention, a suspect must be released if he was not brought before a judge within 10 days, unless the detention period was extended at the request of the public prosecutor. While a 10-day extension could be granted, the grounds must be stated in the application. An arrested suspect later released by a public prosecutor could not be rearrested for the same crime, unless there was supervening evidence. Defence counsel or other persons acting on behalf of a suspect detained or arrested with a warrant could petition the competent court to examine the legality of the arrest or detention. The court must promptly examine the suspect and either dismiss the application or order the release of the suspect, who could also be released on bail. The public prosecutor and defence counsel were entitled to state their case in court on the day of the examination. The right to appear before a judicial officer was, therefore, fully protected under the law.

46. As to the conditions of "voluntary appearance" referred to in paragraphs 108 and 109 of the report, a police officer could stop and question, on the basis of reasonable doubt, anyone suspected of committing a

crime, or of knowledge that a crime had been or was about to be committed. The suspect could be invited to accompany the officer to a police station for further questioning, but could refuse. If he was taken to the police station by force, the arresting officer could be charged with illegal arrest under the Criminal Code. However, if the suspect went voluntarily, he could be kept for only six hours.

47. Turning to question 11, he said the purpose of the Security Surveillance Law was to keep persons who had committed specific offences under close observation so as to avert any risk of recidivism and help reintegrate them into society, thus maintaining national security and social order. A person who had served part or all of a prison sentence of up to three years for offences subject to security surveillance, or concurrent offences, was subject to a security surveillance order, which could be obtained upon a public prosecutor's application to the Minister of Justice. The application was reviewed by the Security Surveillance Board, chaired by the Vice-Minister of Justice, which issued an opinion; on that basis a decision was rendered by the Minister of Justice. The person under surveillance was required to report to his local police station. A public prosecutor or Judicial Police Officer could render all protection deemed necessary for the person's improvement and self-defence, as well as any assistance required for his social rehabilitation. Similarly, the person concerned could file an administrative appeal with the court for repeal of the order.

48. Mr. KRETZMER commended the delegation's detailed oral replies, but recalled that, following consideration of the initial report of the Republic of Korea, the Committee had noted, as its main concern, the continued operation of the National Security Law. He was equally dissatisfied after the delegation's defence of it at the current session. It was the Committee's duty to determine whether the country's application of its laws was consistent with the Covenant, and the delegation's replies had made it abundantly clear that it was not, as evidenced by two communications against the Republic of Korea. It was not for the Committee to contest any country's right to guard its national security, as explicitly stated in its concluding observations on the country's initial report in 1992, and the Covenant took that into account, particularly in connection with article 19 governing freedom of expression. Limitations were indeed provided for, but they must meet certain conditions and must be shown to be necessary. Then, as now, the Committee had not been convinced that the restrictions applied by the Republic of Korea had been essential for its national security.

49. The designation of North Korea as "an anti-State organization" spoke volumes. It was unacceptable that the mere expression of views that might coincide with those held by North Korea should be interpreted as endangering national security. Notwithstanding the new President's directive for a narrower interpretation of the National Security Law, it was still in force, and until it was amended to provide that such restrictions could be imposed only if genuinely and strictly necessary, the Republic of Korea would continue to be in breach of its obligations under article 19 of the Covenant. Not only were certain political parties in Korea clamouring for its amendment, but the Committee had unequivocally stated that the Law as applied was incompatible with that article.

50. Another issue concerned pre-trial procedures and torture, which were linked. The delegation had expatiated on the mechanisms adopted to prevent torture, one such being the monthly visit by the public prosecutor to detention facilities. If, however, as stated in the report, a person could be held for 30 days and, under the National Security Law, for 50 days, the public prosecutor's monthly visit could hardly be effective. It had been stated in paragraph 118 of the report, and corroborated by the delegation, that an arrested suspect could apply for a review of the legality of the arrest under the new Penal Procedure Code. Article 9, paragraph 3, of the Covenant, however, clearly prescribed that a detainee must be brought promptly before a judge or other judicial officer as the most effective means of protection against police or other pressure, placing the onus squarely on the State party. Since Korean law did not comply with that provision, a detainee could meanwhile be dissuaded from seeking a review. He asked why the burden of application was placed on the detainee, in flagrant breach of article 9. Further, while a suspect could not be arrested without a warrant, one could presumably be obtained in his absence, thus violating article 9, paragraph 3.

51. The delegation had said that a detainee had the immediate right to be assisted by counsel. What did the term actually connote? Did it include the right for counsel to be immediately informed? According to one Korean NGO, it was difficult at times for counsel to gain access to detainees. He requested more information on that subject. Also, a suspect could be detained for 10 days in police custody, followed by 10 days' detention by the public prosecutor, who could seek an extension of a further 10 days. If indicted, the accused was kept in detention until the trial. Who made the decision and on what grounds?

52. Mr. ANDO said he had been present at the consideration of the initial report of the Republic of Korea, at the time of the cold war, when South-North tensions had been acute and the trauma of the Korean war had still been very much in the minds of its citizens. But times had surely changed dramatically, and the new President was applying what he had dubbed a "sunshine approach" to North Korea. He hoped it would result in the unification of the two Koreas.

53. That having been said, he had some areas of concern. His first question related to the place of the Covenant in the domestic legal system, which had already been raised during consideration of the initial report. From the current report (paras. 9 and 10) it was clear that the Covenant took precedence. However, the report was so cautiously worded as to be ambiguous, as instanced by the statement that article 6 of the Constitution provided that international treaties promulgated under the Constitution and the generally recognized rules of international law had the same effect as the domestic laws. But what if subsequent domestic legislation contravened one of the provisions of the Covenant once it had been ratified? In the United States, international treaties had the same rank as federal legislation, but in the event of conflict the treaty obligation prevailed. He inquired whether the same obtained in the Republic of Korea.

54. He would like to know the situation on gender equality in the Family Law, and the outcome of the work of the Special Committee for Revision of the Civil Code set up by the Government to review that Law. He shared Mr. Kretzmer's concerns about the application of the controversial National

Security Law (NSL) and its inhibitive effect on exercise of the right to freedom of expression. There was, of course, the espionage clause, but that did not stop the authorities from treating relevant cases under ordinary criminal law or under a law specific to the interests it wished to promote. Since it was clear that the Korean people wished to see the NSL abolished, he wondered whether, with the change in the international atmosphere surrounding Korea, there was any process of consultation with the authorities. The delegation had explained that the Security Surveillance Law was also covered by the NSL. It could perhaps shed some light on the legal effects and so-called reference purposes of the law-abidance oath prisoners were requested to take upon their release.

55. Mr. Bhagwati (Vice-Chairperson) took the Chair.

56. Mr. KLEIN, referring to questions 7-11, expressed deep concern about the NSL. He could see that the experience of the Republic of Korea had been difficult, traumatized as it had been by its history of war, occupation and division. Coming himself from a country divided for 45 years, he understood all too well the situation of a "front-State" situated along a border where antagonistic ideologies and values confronted each other, and which might prompt it to develop attitudes held untenable by others. Nonetheless, the criticism rightly levelled at it had stemmed not from an underestimation of the continuing dangers to which it was exposed, but from the actions of a democratic republic that claimed to ensure the human worth and dignity of all people (in the terms of its Constitution) in its determination to avert danger. That very question had been at the heart of the Committee's deliberations on the country's initial report, and must be at the heart of the current discussion.

57. The delegation had pointed to new developments, but although the period covered ended in 1996, the new directives remained just that. Based on the rule of law, a State's directives could not alter the NSL; judges could not be bound by them, but by the Law in its current form. It was no secret how Korean courts had been applying that Law, and many things could occur between the initiation of an amendment and parliament's enactment. Meanwhile, the Law remained in force and caused grave concern, containing such terms as acts of an anti-State organization, State secrecy and infiltration. As recently as 1997, a record 674 persons had been convicted under the Law; while the number had declined, it remained large. Films, books, oral and written protests and even paintings were censored under that Law, which could be easily used, as indeed it had by the Republic of Korea, which saw itself as a "front-State", to interpret any protest against State political action as abetting the enemy and to immunize its own policy against criticism. Thus, in legal terms, the crux of the matter was that, in the formulation of punishable acts and in the application of the Law, the principle of proportionality as a moderating element had been lost from sight. Accordingly, the Law must be abolished or at least carefully amended against the background of the Covenant as a whole. An important question was what should be done about persons convicted under that Law, in contravention of the Covenant.

58. He had three specific questions on that subject. First, what did the constitutional guarantee that national security restrictions on the freedoms and rights of citizens would not violate any aspect of those rights actually

entail in relation to the aforementioned cases? Second, what were the form and duration of the correctional education provided in prisons (para. 191 of the report) to persons convicted for attempting to overthrow the democratic system? Finally, he confessed himself baffled by the law-abidance oath that had replaced the "ideology-conversion oath". Surely everyone was expected to abide by the laws of a State? The oath also constituted discriminatory treatment, since it was not required of all citizens, nor even all prisoners. What were its precise implications and actual effects?

59. On the independence of the judiciary, he found questionable the system of reappointment of judges, as established in article 105 of the Constitution, which perforce affected their independence. He would like to know how many were not reappointed and why, and how they would earn their living. Were they barristers who could simply resume their practice? Or was their financial security dependent on their judgeship?

60. Mr. LALLAH said that while the catalogue of positive measures taken by the Government of the Republic of Korea since the consideration of the initial report was undoubtedly impressive, a number of problems remained. In the first place, the Constitution had not been reviewed and was still by no means clear-cut on the issue of practical guarantees of the enjoyment of basic rights. Second, the Government did not seem to be clear in its own mind about the place of the Covenant in the internal legal order. It had been brought to his attention that the Republic of Korea's report to another monitoring body suggested that special laws took precedence over obligations under international treaties. Associating himself with the remarks of previous speakers on the subject of the National Security Law (NSL), he remarked that there seemed to be a mindset in Korea that prevented an objective assessment of what a basic right really was. Article 7 of the Law unquestionably constituted a gross violation of article 19 of the Covenant. In reporting a decrease of around 25 per cent in the number of persons arrested under the Law in 1998, the delegation had omitted to explain that the number of such arrests had risen by over 300 per cent between 1993 and 1997. Clearly the NSL was still being applied with great severity. Associating himself with Mr. Klein's remarks about the so-called "law-abidance oath", he remarked that such an oath was valueless when there was no guarantee that the law itself did not criminalize the exercise of fundamental rights under the Covenant. In conclusion, he endorsed Mr. Klein's remarks concerning the security of tenure of judges.

61. Ms. EVATT said that, while associating herself with the remarks made by previous speakers, especially in relation to the NSL, she proposed to focus on questions 2, 3 and 4 of the list of issues. Endorsing comments about the proposed abolition of the family headship system, she noted the relative importance given to the birth of male children in Korean society and said that she had read with alarm of the intense interest shown by prospective parents in having advance knowledge of the sex of a foetus and the disproportionate numbers of abortions of girl babies. Since, moreover, abortion was illegal in Korea in most cases, the very high abortion rate surely contributed towards the country's relatively high rate of maternal mortality. In taking effective steps to improve the status of women in society, the authorities should not only relax the application of the abortion laws, but should also ensure that women had equal access to family planning services.

62. While welcoming the adoption of the Prevention of Domestic Violence and Victim Protection Act in 1997, she remarked that budget allocations for the implementation of the Act appeared to be rather low. Was it true that the period of effectiveness of protection orders in cases of domestic violence was limited to only two or three months, that rape was not included under the heading of domestic violence, and that rape victims were still under social pressure to marry the perpetrator? Other areas of concern were the difference between the marriageable ages for men and women and the compulsory waiting period of six months for women wishing to remarry.

63. In the field of employment, she understood that many Korean women working in small businesses did not benefit from labour standards or equal employment opportunities. The establishment of a Presidential Commission and the enactment of the Gender Discrimination Prevention and Relief Act were to be welcomed but further details were needed of the Commission's functions, powers and accessibility to women workers. Lastly, referring to the low level of women's participation in political life, she said that in that area, too, a comprehensive review of existing laws was clearly required.

64. Mr. WIERUSZEWSKI, referring to the question of torture, said that the report and information from other sources implied that efforts to eradicate the practice had not yet proved fully effective. In connection with the statement in paragraph 92 concerning compulsory inspections of detention facilities, he asked whether that meant that the prosecutor also had access to detention areas run by the national intelligence agency. With reference to paragraph 94, he welcomed the Supreme Court's decision of 28 September 1993 but asked for additional information about the kind of proof a victim of torture had to produce. According to information he had received, courts were reluctant to accept allegations of torture where there were no visible signs of ill-treatment.

65. Referring to the establishment of the Human Rights Infringement Report Centre referred to in paragraph 96, he asked for examples of complaints received by the Centre over the past two years, and any action taken in consequence. The numbers given in paragraph 98 for cases where investigating agents had been punished for violent or cruel treatment of suspects seemed disproportionately small considering that over 700 complaints of ill-treatment had been filed between 1996 and August 1998. It would appear that a climate of impunity still existed within the law enforcement services, especially bearing in mind that complainants included not only detainees under the National Security Law but also ordinary criminals.

66. Mr. YALDEN, welcoming the forthcoming establishment of a national human rights commission, asked for additional information about its functions, operation and budget. Would members be appointed for a substantial number of years? Would its decisions be in the nature of recommendations or would they have executive force? Would its jurisdiction extend to the military and the security forces? He also welcomed the steps being taken to improve the status of women, but thought that not enough information had been provided about results achieved so far. The setting-up of a Presidential Commission was an excellent step, but was there no independent body to look into the matter? Could not the proposed human rights commission also play a role, inter alia,

in connection with meeting women's employment targets? What results had been achieved by the Government's equal pay policy? Did an independent mechanism exist for dealing with complaints from prisoners? The delegation had mentioned the possibility of petitioning the Minister of Justice, but that was a governmental rather than an independent channel.

67. Mr. ZAKHIA asked who had the right to request a review of a law on grounds of unconstitutionality. He also requested more details about the proportion of women in university and civil service posts and in the professions. Why was women's participation in parliament minimal, despite the quotas introduced? Lastly, he wondered whether the protection of human rights in the Republic of Korea would not be enhanced if NGOs were given the right to bring matters before the courts.

68. Mr. SCHEININ, referring to one of the two Optional Protocol cases involving the Republic of Korea mentioned by an earlier speaker, recalled that in explaining the court decision against the complainant, the State party had said that Mr. Tae Hoon Park had been convicted not because the law precluded the application of the Covenant but as a matter of necessity. How could such a position be justified in a country where a state of emergency had not been declared? Clearly, the National Security Law enjoyed priority over the Covenant.

69. On the question of prenatal sex selection already raised, he said that forcing a woman to abort was a violation of article 7 of the Covenant. Did the Korean Government see article 7 as a positive obligation to take effective steps to eliminate such practices?

70. Turning to the question of the prevention of torture, he welcomed the action taken but noted that only a few of the numerous complaints filed resulted in an investigation and still fewer in the punishment of the perpetrators. The root cause of the problem was perhaps the fact that the Korean criminal system seemed to rely very heavily on confessions. It might be helpful if the rules of evidence were tightened in that respect, for example by extending the withdrawal of a confession by the defendant to other evidence, including confessions by accomplices, obtained through pre-trial interrogation.

71. In that connection, he referred to the second Optional Protocol case (Ajaz and Jamil) involving the Republic of Korea that had been considered by the Committee. Agreeing with previous speakers that the pre-trial detention period was excessively long, he suggested that a higher degree of compliance with article 9, paragraph 3, of the Covenant could be achieved by ensuring that judges saw the detainee at regular intervals and that he or she received frequent visits from a doctor and a lawyer. A stricter separation of detention premises for persons held by the police, the investigating authority and the court, respectively, would also help to eradicate torture. Did some trials take place inside the detention centre, or was that prohibited?

72. Lastly, referring to the delegation's encouraging remarks about the long-term possibility of abolishing the death penalty, he asked for an update of the situation with regard to death sentences and executions. Did the current situation effectively amount to a moratorium?

73. Ms. CHANET said that positive developments since the consideration of Korea's initial report included the prospective establishment of a national human rights commission and the withdrawal of some, if not all, of the Republic of Korea's reservations to articles of the Covenant. On the other hand, many points raised in connection with the initial report were still outstanding. No amendments had been introduced in the Constitution, although some of its provisions, such as for example paragraph 37 (2), were manifestly at variance with the Covenant. While welcoming the fact that the Government appeared to be aware of the problem, she emphasized that the National Security Law was inconsistent with not only article 19, but also article 9 of the Covenant.

74. Agreeing with previous speakers that the pre-trial detention period was too long, she asked what were the detainee's rights during that time. When could he first see his lawyer or a doctor? Could the lawyer be present at the interrogation? When were his rights, including the right to be asked to be brought before a judge, explained to him? In any event, should that right not be granted automatically? She invited the delegation to explain how Korea interpreted its obligations under article 9, paragraphs 3 and 4 of the Covenant. Additional information about the conditions governing the issue of arrest warrants by the judge would also be welcome.

75. In conclusion, associating herself with Mr. Klein's and Mr. Lallah's remarks concerning the reappointment of judges, she said it had been brought to her notice that a judge who had convicted five policemen had subsequently not been reappointed. She would be glad to receive further information about the Republic of Korea's compliance with article 14 of the Covenant in that connection.

The meeting rose at 1.05 p.m.

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Sixty-seventh session

SUMMARY RECORD OF THE 1792nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 22 October 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Second periodic report of the Republic of Korea (CCPR/C/114/Add.1 and CCPR/C/67/L/KOR) (continued)

1. At the invitation of the Chairperson, the Korean delegation resumed their places at the Committee table.

2. Mr. BHAGWATI noted the progress that had been made in human rights in Korea, but said there was still room for improvement and echoed the concerns expressed by the other members of the Committee. He would like some clarification of article 111 of the Constitution, laying down the functions of the Constitutional Court, which stated that the Court examined the constitutionality of laws at the request of the courts and "constitutional complaints as prescribed by Act". He wished to know what was meant by that formula: whether an individual could challenge the constitutionality of a law by submitting a complaint directly to the Constitutional Court or whether only the courts could submit such a complaint. That was not clear from the wording of article 111 of the Constitution. He wondered also whether there had been cases of individuals contesting the constitutionality of a law by citing a violation of the Constitution or the Covenant, and whether any law had actually been declared unconstitutional.

3. He was concerned also about the independence of the magistracy, which was at the heart of democracy, the rule of law and respect for human rights. He considered the irremovability of judges particularly important, since, if judges depended on the goodwill of a political party to remain in office their independence was compromised. Thirdly, he had noticed in paragraph 167 of the report, concerning the application of article 14, paragraph 3 of the Covenant, a surprising practice: "upon recognition that a witness cannot make a sufficient statement in the presence of the accused [...], the accused can be ordered to withdraw from the court to allow the witness to state his or her opinion. In this case, when the witness has finished his or her oral statement, the gist of the statement shall be announced to the accused by the court official after returning the accused to the courtroom (para. 297 of the Penal Procedure Code)". He wished to know in what circumstances that procedure was applied and how, in such conditions, the accused could cross-examine the witness, for, if he could not, the safeguard of article 14 was breached.

4. He referred to a communication from a Korean who had applied to the Committee under the Optional Protocol because he had been convicted for trade union activities. The Committee had recommended that he be compensated. The author of the communication had been obliged to bring an action for damages, which had been taken as far as the Supreme Court and had failed. Consequently, the Committee's recommendations had not been put into effect. He wished for some clarification. Lastly, he expressed surprise and sadness at the practice of including fingerprints on identity cards, which was tantamount to treating the holder as a potential criminal.

5. Mr. HWANG (Republic of Korea), replying to the oral questions on the National Security Law, said that some of them, he felt, arose from a misunderstanding about the type of

person detained under it. Of those detained, 83 per cent were members of Hanchongnyon, the Korean Federation of General Student Councils, which had as its main aim the overthrow of the Government of Korea in accordance with the unification designs of the socialist regime imposed by the dictatorship which had ruled North Korea for over half a century, whose main argument was that the Republic of Korea had been colonized by the United States. Hanchongnyon had decided to attack and overthrow its enemy, the Government, through incessant violent and destructive action by militant organizations with telling names such as Front Line, Anti-American Entity and Liberation Army, set up to organize illegal demonstrations during which they used fire hoses and Molotov cocktails. A policeman had been stoned to death and 6,000 people had been injured at Seoul University in 1996. To give the Committee a proper idea of the violence of the 1996 student demonstrations, the Korean delegation had circulated a brochure by the National Security Agency with photographs of students confronting riot police, throwing stones and brandishing hoses, and of masked individuals setting fire to police officers and barricades. The university buildings had been sacked and destroyed during the demonstrations. Hanchongnyon had never shown any remorse over the result of the violence and had even boasted of its triumphant victory. In 1997, during a University opening procession, the students had occupied and blocked the main Seoul thoroughfare for seven days, thrown grenades and caused the death of a policeman. They had seized two civilians whom they took to be police informers and beaten them to death with fire hoses. The Supreme Court had thus ruled on 3 September 1998 that the central Hanchongnyon organization was an organization in enemy service within the meaning of article 7, paragraph 3, of the National Security Law. Since then some students had left the movement, but those who still belonged were pursuing their subversive activities to overthrow the lawful Government of the Republic of Korea, which would take rigorous measures to uphold order. Other than students, the majority of those convicted under the National Security Law were spies, accomplices in espionage or persons accused of having relations with North Korea.

6. The law-abiding oath had taken the place of the ideological conversion oath, which had been in force for over 60 years and had its origins in Japanese colonial legislation. Upon coming to power, the present Government had attempted to abolish the system entirely, but had been checked by hostile public opinion. Consequently, it had replaced the ideological conversion oath with the law-abiding oath, which was not in conflict with freedom of expression.

7. Questions had been asked about the Government's issuing of a directive urging the executive to interpret the National Security Law strictly and apply it with caution: such a directive could not be imposed on the judicial authorities. While that was true, it was to be noted that the judiciary voluntarily respected the obligation to interpret the law strictly.

8. Concerning the revision of the National Security Law, background knowledge of Korea was once again required in order to understand the situation. The political parties in the ruling coalition held a slim majority. The opposition Grand National Party, numerically the largest, was openly hostile to the revision of the Law, considering the Korean public in general to be opposed to the revision. The Grand National Party had even launched a petition against the revision; thus it was clear that the National Security Law was not abused by the Government.

9. Mr. KIM (Republic of Korea) added that the laws and regulations of a country generally reflected its history and society, which were never fixed but in constant flux. It was in that light

that the Government of Korea envisaged amending the National Security Law. When the Government came to power, there had been debate as to whether to abolish the Law. Now, however, it was felt that abolition would be too radical a measure, and that revising certain articles would be more appropriate. Article 7 was currently under discussion: that article could admittedly be problematic. His delegation could not agree that the law was terrible; it was a law that reflected the terrible situation in Korea. The fact that the law had both supporters and opponents was a mark of the pluralism of Korean opinion. The authorities would seek a national consensus on the wording of article 7 and would take into account the opinions expressed by the Committee, which provided guidance to States parties on the way to comply with the Covenant.

10. He went on to reply to the questions about the revision of the Korean Civil Code. There were three main elements to the proposed revision: whether the status of head of the family should continue to be limited to men; whether the mandatory waiting period for remarriage after divorce should be maintained; and whether the prohibition of marriage between people with the same surname and family origins should remain. Debate on the subject in the Republic of Korea had been very animated, particularly as it concerned the status of women, and traditionalists had expressed opposition to any amendment of laws which in fact reflected culture and history. In the end, the Government had decided to abolish the mandatory waiting period for remarriage after divorce. The relevant provision had been amended and the text was currently under examination by the National Assembly. Second, the Government had been unable to identify any national consensus or convergence of opinions on abolition of the provision restricting the status of head of the family to men. Third, the same was true of the prohibition of marriage between people with the same surname and family origins. In practice, however, administrative arrangements were occasionally made for people affected by the provision to register their marriages under the law. In the present climate, there was no consensus for the abolition of that provision.

11. Two members of the Committee had noted the imbalance between the numbers of male and female births and linked it to abortion and foetal gender selection. Abortion was a crime under the Penal Code, but there was a law permitting abortion in three situations: rape, incest, and where pregnancy might have very serious consequences for the mother. His delegation had no figures to show whether there really was an imbalance between the numbers of boys and girls born. There was an undeniable preference for boys among the Korean population, but it was considerably less marked in the cities than in the countryside. It was thus a question of education, and the Government would have to act to dissuade the public from using illegal abortion to favour the birth of boys.

12. It had been observed that the budget of the Republic of Korea for combating domestic violence was too small, which was true. The Government would attempt to increase that budget as part of its efforts to improve women's status. Regarding labour discrimination and equal pay, mention had been made of the difficulties encountered by women at the head of small companies. He would say that there was no discrimination in law and that it was the duty of the Government to combat de facto discrimination. The delegation had been asked if it had an English-language version of the National Plan to improve the position of women (paras. 36-38 of the report); unfortunately it did not, but would send a copy to the Rapporteur, of the Committee.

13. The Committee had asked whether in 1996 the 10 per cent target for women employed in the civil service had been achieved. It had been met in the Ministry of Foreign Affairs, where the latest recruitment examinations for foreign-affairs officials had led to the employment of eight women out of a total of 40 new recruits, representing 20 per cent. The Ministry of Justice remained more conservative. It must be remembered, however, that the target was a guideline, a recommendation, not a hard and fast rule. The Presidential Committee on Women (see para. 39 ff. of the report) was under the direct control of the President, to whom it reported, while its predecessor, the Committee on Gender Policy, had been under the authority of the Office of the Minister of State. It had quite a broad mandate: where it perceived gender discrimination contrary to the principle of equal rights, it issued an opinion and, if the matter was not resolved to its satisfaction, it could take legal action and lodge an accusation. The Committee had asked whether rape was covered by the definition of domestic violence. The two members of the delegation who worked as public prosecutors said that it was. However, they were not aware of any case in which a wife had accused her husband of the crime of rape.

14. Mr. LEE (Republic of Korea) said he would respond to the questions about safeguards for people under arrest or in detention. Unfortunately, the delegation had had too little time to compose its replies, and the questions which had not been answered would be dealt with in the next periodic report.

15. Access to counsel was a right protected in law and in practice that applied equally to people suspected of violations of the National Security Law. Once a month, public prosecutors visited the premises of the Agency for National Security Planning. Those premises were not to be used to hold people under arrest, but people suspected of violating the National Security Law could be detained at the police station closest to the Agency so the public prosecutors also made monthly visits to the police stations. As stated in the report (para. 118), a review of the legality of an arrest was possible but not automatic; the person concerned had to request it. In 1999, approximately 77 per cent of those arrested or detained had requested a review. The investigating authorities were required to inform suspects under arrest that they were entitled to the services of counsel. In practice, if a suspect did not have a lawyer, the Bar Association was asked to appoint the duty lawyer of the day. Suspects could be held in detention for up to 30 days, or up to 50 days if suspected of violating the National Security Law. The public prosecutor's department could release them at any stage. Once charged, they could be detained for a maximum of six months, but could be released on or without bail. The Minister of Justice had given instructions that investigation without detention of the suspect should be the rule, and the Supreme Court had ordered all courts to follow it strictly.

16. Confessions obtained by means of torture were not admissible as evidence and investigation service officers found guilty of ill-treatment or torture never escaped unpunished. During the period 1995-1998, the authorities had received 57 complaints of torture, of which 51 had been declared inadmissible and five were still under investigation: in the remaining case, charges had been brought, but the defendant had been found not guilty. An accomplice's confession could serve as evidence, according to case law of the Supreme Court. There were no rules governing medical intervention during an investigation, but if a suspect was ill, the police or the public prosecutor would call a doctor. In emergencies, a suspect could be arrested without a warrant and kept in custody for 48 hours; after that time he could be held only if a court had issued a detention warrant within the 48 hours: otherwise, he had to be released.

17. Regarding the independence of the National Human Rights Committee, it was to be noted that its members could not be removed from office unless physically or mentally infirm or sentenced to imprisonment or disciplinary sanctions. The Committee established its own general policy totally independently of the Ministry of Justice, to which it was not even required to report.

18. Mr. KIM (Republic of Korea) added that the human rights bill currently before the National Assembly clearly said that the Human Rights Committee would be able to make recommendations to the military authorities and security organs. While they would only be recommendations, the publicity they received would ensure that they had a certain influence. As concerned the death penalty, a member of the Committee had asked about the fate of a Pakistani national and his accomplice who had been sentenced to death for murder. Both had been granted amnesty and were now in their home country; he was not aware whether they had been tortured during the investigation. The abolition of the death penalty was a long-term objective and no date had been set for the time being. Some 30 persons under sentence of death were currently in Korean prisons. No execution had taken place in recent years, particularly since the new Government had come to power.

19. His delegation had taken careful note of the Committee's comments to the effect that article 37, paragraph 2, of the Constitution could conflict with the Covenant; he assured the Committee that the restriction made in that paragraph was only ever narrowly interpreted.

20. Mr. HWANG (Republic of Korea) returned to the appointment of judges, which appeared to be of great concern to the members of the Committee. A judge's functions were surrounded by safeguards enshrined in the Constitution and the Courts Organization Act. Would-be judges had to take an examination which only a very small number of candidates would pass: following that, they underwent two years of training at the Judicial Training and Research Institute. Depending on their results and wishes, they would become judges, public prosecutors or lawyers. Judges were not irremovable: such a system would not be popular among Koreans. Instead, there was a reappointment system. It was extremely rare, however, for a reappointment to be refused. Recently, it had been necessary to replace three Supreme Court judges because their mandate had expired. The President of the Supreme Court recommended candidates although, according to the law, judges were appointed by the President of the Republic with the approval of the National Assembly: that power of recommendation was the guarantee that Supreme Court judges were fully independent of the executive. The reappointment of judges was being studied by a number of non-governmental organizations and there were no grounds for fearing that the system could be used to eliminate particular judges or force them to act in a certain manner.

21. Concerning the difficult issue of the relationship between international treaties and national legislation, article 6 of the Constitution provided that treaties ratified under the Constitution had the same effect as the laws of the Republic. That provision was subject to differing interpretations in Korea, where the issue was debated widely. There were different laws with the following hierarchy: the Constitution had supreme authority, followed by the laws passed by the National Assembly, then the presidential decrees provided for by those laws and, finally, ministerial regulations. International treaties were also very varied and not all had the same weight. Certain provisions of international law put States parties under binding

commitments to the international community, but that did not automatically mean that individuals were entitled to invoke them directly. The place of each international provision within national law had to be determined case by case. Supreme authority to interpret the laws lay with the Supreme Court, but, to date, no ruling had been made on the issue. Lastly, his delegation needed more time to reply to the question about laws being ruled unconstitutional.

22. The CHAIRPERSON thanked the delegation for the information and invited it to reply to questions 12 to 19 on the list of issues.

23. Mr. LEE (Republic of Korea), replying to the question about telephone-tapping, said that in 1993, pursuant to article 18 of the Constitution guaranteeing the privacy of correspondence, the Government had passed a law on protection of correspondence, regulating the conditions in which telephones could be tapped and communications could be restricted by the authorities. The rule was that such measures could be taken only with written authorization from a judge. The law restricted the cases in which tapping was authorized: it was allowed in the event of infractions listed in the Criminal Code or breaches of the legislation on narcotics and psychotropic drugs. The public prosecutions department had to seek authorization from a judge, who could provide it for no more than three months. If national security was at risk, authorization had to be obtained from the presiding judge of a higher court and could be provided for no more than six months. In emergencies, the public prosecutor's department or an officer of the criminal investigation service could take action to restrict mail and telephone communications but had to secure authorization within 48 hours of doing so, failing which the restriction must be lifted immediately. Illegally intercepted mail and telephone conversations could not be admitted as evidence in court or disciplinary proceedings and the culprits were liable to prosecution and could be sentenced to up to seven years' imprisonment. The judicial authorities issued 445 authorizations in 1997, 480 in 1998 and 124 from 1 January to the end of May 1999, mostly in connection with drugs or arms trafficking. On 11 December 1998, a proposal to amend the law on protection of correspondence, increasing the penalties for illegal telephone-tapping and offering improved protection for information acquired by such means had been submitted to the National Assembly. Pending adoption of the new text, the Minister of Justice had given instructions for all documents pertaining to telephone-tapping to be protected and for officers of the criminal investigation service to be strictly supervised when they took such measures.

24. Mr. HWANG (Republic of Korea), responding to issues 13 and 14, said that before describing progress in labour relations since the submission of the previous periodic report, he must point out that Korea had entered a reservation to article 22 of the Covenant. Despite that reservation, the Government had continued its efforts to reform labour legislation and on 15 January 1998, the first tripartite commission, consisting of representatives of the Government, the employers and the workers, had met. The goal had been to overcome the economic crisis and establish new working relations among all the parties. The commission had concluded by adopting a social agreement representing a commitment on all sides to turn the national economy around. A second tripartite commission had met to review progress in implementing the decisions taken by its predecessor and consider further action. In May 1999, a law on the establishment and functioning of the tripartite commission was passed to reinforce the commission's role as an advisory organ. The third tripartite commission would begin work on 1 November 2000 and would undertake a detailed examination of all labour relations issues.

25. Concerning restrictions on trade union membership and the right to strike, notable improvements had been secured in the recognition of trade unions. The 1997 Law on trade unions and labour relations strengthened workers' rights to form and join trade unions. Until then, there had been only single trade unions, and the Government was making efforts to unify the collective bargaining mechanisms. The unification process would require time, and it was one of the issues which the tripartite commissions were called upon to examine. The first tripartite commission had decided on 6 February 1997 to revise all provisions relating to teachers' unions, and the second commission had reached agreement on how to safeguard teachers' right to form and join unions. A draft adopted on 6 January 1999 would permit teachers to form and join unions from 1 July 1999. The issue of teachers' unions was extremely controversial, since Confucian tradition held teaching as an almost sacred profession. Hence, agreement by the commission and willingness on the part of the Government had been essential to progress. On 1 July 1999, teachers' groups including the Federation of Korean Trade Unions, the Korean Union of Educational and Teaching Workers and the Confederation of Teachers' Organizations had all established trade unions. The first tripartite commission had decided on 6 February 1998 to grant civil servants the right of association. In the first instance they had been authorized to form workplace associations; the organization of proper unions would be the second stage. A law to that effect had been adopted on 20 February 1998 and had entered into force on 1 January 1999. Civil servants' associations had therefore been set up in the workplace to discuss matters such as health, working conditions and efficiency. Only civil servants at grade 6 or below could belong to associations, those from grade 5 upwards being classed as administrators. Most civil servants could be members of such associations, since only 8 per cent (the upper ranks) were not. The number of workplace associations could be expected to increase considerably when the second phase of civil service reorganization reached completion. All questions relating to the establishment of trade unions as such would be examined at the forthcoming meetings of the tripartite commission, which would review the results of the associations' work and would also take public opinion into account.

26. In relation to the arrests of trade union leaders, it had to be emphasized that the Korean Government guaranteed basic trade union rights such as freedom of association and the right to collective action. However, it did take care to ensure that illegal activities accompanied by violence and destruction were punished. In the Republic of Korea, strikes often led to violence, and illegal occupations of university sites or buildings and damage to property were common. The Government tried to arrange compensation for victims, but to little avail. The Constitutional Court had, moreover, declared the Civil Code provisions inadequate for punishing troublemakers in illegal strikes, since, often, the union agitators in such strikes were not in a position to compensate their employer for the damage inflicted, and, as proceedings by an employer against trade unionists often led to more industrial action by workers, employers would then withdraw their complaints. That was the context in which 14 trade unionists had been sentenced or were currently in detention awaiting trial. The Government would continue to guarantee the right to strike, but it intended to suppress illegal strikes accompanied by violence or destruction, acting within the law and in conformity with internationally recognized standards. Generally, the authorities were determined to improve the labour relations system and carry out the reforms needed to turn the economy around.

27. In reply to question 15, he said that the organizers of open-air demonstrations were required to inform the head of the relevant police station. When it was clear that the

demonstration posed a risk to peace and public order, the head of the police station could ban it, providing written notification and reasons for the ban to the organizers. His decision could be challenged before the competent municipal or provincial authorities, which were required to acknowledge receipt of the challenge within 72 hours and reach a decision within 24 hours following the acknowledgement of receipt, failing which the ban was invalidated. The demonstration could also go ahead if the ban was patently illegal or unreasonable. In such cases, the decision to ban could be challenged before a higher court within 10 days, and the court had three months in which to give its ruling.

28. Mr. KIM (Republic of Korea) said in reply to question 16 that the principles of equality of rights, particularly between men and women, and of non-discrimination were enshrined in the Korean Constitution. Additionally, the human rights bill contained language designed to prevent all discrimination on the grounds of sex, religion, age, social background, race, colour, national origin, political opinions and other factors.

29. Turning to question 17, he emphasized the provisions of article 6, paragraph 2, of the Constitution, whereby the status of foreigners was guaranteed in accordance with international law and the provisions of international instruments. Enforcing that article was the responsibility of the immigration services under the supervision of the Ministry of Justice, each branch of which had an official responsible for checking at least once monthly that foreigners' rights were being respected and recording his findings. There was no other organ responsible for seeing that foreigners' rights were respected but there was a mechanism for appealing against decisions by the immigration services. No law guaranteed Koreans and foreigners equal employment rights. Foreigners wishing to spend more than 90 consecutive days in the Republic of Korea were required to obtain a residence permit. Such permits were not granted to manual workers. Official figures indicated that at the end of 1998 there had been more than 160,000 foreign workers in the country and illegal workers numbered over 100,000 more. Both categories were subject to the standards for equality in employment. Hence, illegal migrant workers who suffered ill-treatment could complain to the labour inspectorate and the law on working conditions applied to them. They were, however, required to leave Korean territory after receiving compensation. Foreign industrial trainees were permitted to remain in Korea for a maximum of three years, but their stay could be extended if they had lived there for at least two years and received a certificate of competence.

30. Concerning the action taken on the Committee's recommendations in three matters which it had examined (question 18), the Committee had asked the Korean authorities to ensure that the authors were compensated, take steps to avoid any repetition of such occurrences, and publicize its findings. Compensation could be granted under the law if a convicted person was found innocent of the offences attributed to him, was retried, or brought legal proceedings for compensation. Neither Mr. Kim (communication No. 574/1994) nor Mr. Park (communication No. 628/1995) had asked to be retried or compensated. Mr. Sohn (communication No. 518/1992) had lodged an appeal with the Supreme Court, which had been dismissed in March 1999, and hence could not claim compensation. The action taken to prevent a repetition of such occurrences had already been described in replies to other questions by the Committee. Lastly, the Government had had translated and publicized in the media in March 1999 the Committee's findings on the three cases. The Permanent Mission of the

Republic of Korea at Geneva had sent the Office of the United Nations High Commissioner for Human Rights information about Mr. Sohn when it had been asked for information about Mr. Park; that error would be corrected.

31. In reply to question 19, Mr. Kim recapitulated paragraphs 12 to 14 of the report and added that human rights education was now provided in schools and universities.

32. The CHAIRPERSON thanked the Korean delegation and invited members of the Committee to ask additional questions.

33. Lord COLVILLE commented that the development of electronic technology in the Republic of Korea was at a very high level, as indicated in paragraphs 180 and 181 of the report (CCPR/C/114/Add.1). However, the situation as described by various non-governmental organizations had been passed over in silence, and the report gave no information on the enormous electronic databases which had been set up. States parties were required to take account of the Committee's General Observations when compiling reports; the Committee had produced a General Observation (No. 16) concerning article 17 of the Convention, in particular the protection of privacy and databases. Thus, the Korean authorities were required to refer to it when describing the implementation of article 17 in their country.

34. He noted that the Republic of Korea had a national computer network which had enabled it to compile a mass of information on every individual. Had the State established, or was it planning to establish, any other such facilities? It would be equally important to know what information was held in the databases and for what purposes. All the evidence suggested that private organizations also had computer databases; the State party ought in every case to take care to ensure that individuals could check what information on them was being held on databases and have access to it so that any errors would be rectified. It was important also, following the European model, to establish independent watchdog bodies to uphold the right to inviolability of one's private life. He understood that the protection of personal information held by public or private organizations was essentially governed by criminal law. That was most unsatisfactory, since the issue of databases was much broader than the scope of criminal law and embraced aspects of private life which belonged in civil law. He was aware that the issue was broad and complex, and that the Korean authorities needed time to consider it in depth; he did not expect an immediate reply. The matter should, however, be dealt with in detail in the next periodic report, notably in the light of the practice and legislation of other countries.

35. The Korean delegation had indicated that a genetic database was being set up. He wished to know what for, what information it would contain, who and what offences it would cover, and on what grounds. In his view, people DNA-tested in a rape case and shown by the test to be innocent should not be included in the database. He would be glad to hear what the Korean delegation had to say on the subject.

36. Lastly, he queried the practice of putting fingerprints on identity cards, which raised questions about respect for private life and the prohibition of degrading treatment. He expressed a wish for clarification on that issue also.

37. Mr. KLEIN noted from paragraph 213 of the report that demonstrations on main roads could be prohibited by presidential decree. Such a general and abstract prohibition did not seem to be in accordance with article 21 of the Covenant in that it was imposed by presidential decree and not under a law as article 21 required.

38. The clause mentioned in paragraph 222 of the report, limiting to one the number of trade unions in an enterprise, was contrary to article 22 of the Covenant and represented a restriction on freedom of association: observations would have to be made on the subject.

39. Paragraph 227 of the report stated that "members of the press are now permitted to join [political] parties". He was surprised that the authorization dated only from December 1993 and wished to know whether other categories of people were prohibited from joining. Regarding the statement in paragraph 192 that "political activities of religious organizations are forbidden", he wished to know the legal basis for the ban and what was to be understood by "political activities". Were churches, for example, prohibited from protesting at social injustice?

40. Mr. KIM (Republic of Korea), in reply to the question on fingerprints, agreed it was fair to ask why Korea continued to take fingerprints when it had asked Japan to stop doing so. Korea was in fact challenging an inequality, for the Japanese authorities only took fingerprints of Koreans living in Japan and not of Japanese nationals, which was discriminatory. Conversely, and in accordance with the principle of equality, everyone living in Korea, both Koreans and foreigners, was fingerprinted, and so there was no discrimination since the treatment was the same for all. The question would be discussed more thoroughly in the following periodic report.

41. As to the potential threats to privacy posed by certain electronic applications, he stated that the Korean Government would in its next periodic report indicate the action it would take to remedy the problem. He added by way of example that the Ministry of the Interior had been obliged to abandon plans for an electronic database to improve the citizen registration system as a result of the opposition they had provoked.

42. A ban on membership of political parties applied to civil servants and to judges. Religious groups as such were prohibited from taking a partisan stance, i.e. supporting a particular political party, but the ban did not apply to their members as individuals.

43. Mr. HWANG (Republic of Korea) said in reply to the question about the powers of the Constitutional Court that the Court had jurisdiction to rule on the constitutionality of internal laws and to bring charges against senior officials (ministers, judges etc.). It also resolved disputes over the extent of ministries' authority. Anyone who believed that his constitutional rights had been violated could apply to the Constitutional Court at any time.

44. In connection with the practice mentioned in paragraph 167 of the report, which, according to one member of the Committee, could hamper cross-examination, he explained that it was for the judge to decide whether the defendant should leave the courtroom. Such decisions were rare; they were normally taken when the witness was a young child or when it was necessary to protect the victim of a rape. In such cases, counsel for the defence remained in the courtroom to assist with the cross-examination.

45. Data from genetic databases were used only in police investigations. The ban on demonstrations on main roads, was justified by the fact that Seoul was a very populous city with enormous traffic jams. The law stated that such a ban had to be imposed by presidential decree and be limited to a very restricted area.

46. Concerning trade unionism in enterprises, the Law of March 1997 on relations with trade unions provided for multiple trade unions to be permitted from 1 January 2002. The delay had been thought necessary to standardize collective bargaining methods, since Korea had not had multiple trade unions in enterprises.

47. The CHAIRPERSON thanked the delegation for its information. Its replies indicated some progress in human rights, including restraints on disciplinary measures and the adoption of laws on the advancement of women and against domestic violence. She was pleased that Korea had withdrawn its reservations to article 7 and article 23, paragraph 4, of the Covenant, and hoped the remaining two would soon be lifted. The Committee still had a number of concerns, first among them being the National Security Law. The Korean delegation had indicated that the Government wished to revise that law but was opposed by public opinion and that the law reflected Korean society and its history. In the Committee's view, public opinion was never a justification for violating the Covenant and any text conflicting with international standards was unacceptable. The Committee was pleased to hear that Korea would take its recommendations into account, but it had already recommended reform of the National Security Law after discussing the previous report in 1992. It wished to know the status of the Covenant under Korean law, for paragraph 9 of the periodic report stated that the Covenant took precedence over domestic legislation. That might be the Government's official position, but it appeared that certain State organs disregarded it. The authority of the Covenant in Korea was therefore not clear. Additionally, the Committee feared that inadequate attention was paid to preventing and monitoring torture. Of 57 complaints of torture, 52 had been rejected out of hand or after charges had been brought, showing that investigative procedures were ineffective. Torture was a crime and the State had an obligation to investigate those complaints. In general, it appeared that the system of safeguards for people deprived of their liberty was inadequate and tended to increase the risk of torture. It that connection, she regretted the absence of a reply to the question about the importance attached to confessions as evidence of guilt. Likewise, article 9, paragraph 3, of the Covenant, required anyone arrested or detained to be "brought promptly before a judge", which did not always seem to be the case in Korea. Regarding article 14 of the Covenant, the Committee had misgivings about the information given in paragraph 167 of the periodic report, which gave the impression that a lawyer was not always present at the examination. It was also not fully satisfied of the independence of the magistracy, given the appointment procedure.

48. The Committee was pleased with the progress on the status of women, on which numerous laws had been passed. The delegation had indicated that public opinion was resistant to change: the Committee considered it the responsibility of the State to overcome that resistance. In that connection, the reaction of the Ministry of Justice to quotas for women was symptomatic. It appeared that there were also State organs opposing improvements in the lot of women. The Korean delegation seemed to have misunderstood the question about freedom of association and article 37 of the Constitution. The question was how a presidential decree could limit human rights when a decree was below a law in the hierarchy of instruments. In a

democracy, limitations were certainly necessary, but they should not take the form of general and abstract prohibitions. Finally, the Committee hoped that restrictions on freedom of association would be lifted, for the provisions mentioned in paragraph 222 of the periodic report were incompatible with the Covenant.

49. She congratulated Korea on the human rights measures taken and expressed a hope that the Committee's concluding observations would encourage the Government to convince the other State organs of the need for change.

50. Mr. KIM (Republic of Korea) hailed at the fruitful dialogue between his delegation and the Committee, whose comments and criticisms would spur his country on to further progress in human rights. He believed it essential to recognize problems and shortcomings and to rectify them. The Government and people of Korea had the will to advance further towards democracy and full respect for basic rights. He added that the questions which had not been answered would be dealt with in the third periodic report.

51. The Korean delegation withdrew.

The meeting rose at 6 p.m.

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HUMAN RIGHTS COMMITTEE

Sixty-seventh session

SUMMARY RECORD OF THE 1793rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 25 October 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

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Draft general comment on article 3 of the Covenant (continued)

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GE.99-44920 (E)

The meeting was called to order at 10.15 a.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 7) (continued)

Draft general comment on article 3 of the Covenant (continued) (CCPR/C/65/R.10).

1. The CHAIRPERSON, invited members to resume their consideration of the draft general comment on article 3 of the Covenant (CCPR/C/65/R.10) paragraph by paragraph.

Paragraph 16

2. Mr. KLEIN suggested that the words "fathers, brothers or husbands" in the second sentence should be replaced by "male family members". In the last sentence, the words "manifestations of" should be inserted between the words "restrictions on" and "religion". While not in disagreement with the ideas underlying the third and fourth sentences, he thought that they were expressed in an excessively abstract manner and were difficult to grasp; some concrete examples of what was meant should be provided.

3. Mr. KRETZMER suggested that the first sentence of the paragraph should be deleted. It went without saying that women should exercise all rights under the Covenant on equal terms with men; he saw no reason for singling out the rights set forth in article 18.

4. Ms. EVATT suggested that the words "granted to" in the first sentence should be replaced by "enjoyed by". Responding to Mr. Klein's suggestion concerning the second sentence, she said that the wording used should be that of the Committee's general comment on article 12, namely, "subject to the control of another person, such as a male relative". As to the last sentence, it should be worded more strongly and brought into line with general comment 22 on article 18. The essential point to be made was that the obligation to protect women's right to equality and non-discrimination should be respected.

5. Lord COLVILLE, while agreeing with that observation, said that the last sentence of the paragraph should also serve as a guide to States parties in the preparation of their reports and should therefore be concerned not only with restrictions that protected women's rights, but also with those which, sheltering behind religious tenets, actually did the opposite.

6. Ms. CHANET, also referring to the last sentence, agreed with the suggestion to insert the words "manifestations of" before "religion". As to the first and second sentences, she remarked that in some societies not only the right of a woman to choose her own religion or belief but also her right to cease to practise a religion was subject to the control of male relatives. She also understood that in certain religions, particularly Islam, women were excluded from certain manifestations of their religion and were forbidden to participate in certain rites. The paragraph could perhaps be redrafted to cover cases where the exercise of a religion was in itself discriminatory. The important point was that religion should not be used as a pretext for

restricting women's rights under the Covenant. She agreed with previous speakers that the last sentence of the paragraph was too abstract and might be difficult to understand.

7. Mr. YALDEN thought that the last sentence would be clearer if the word "protect" was replaced by "affect".

8. Mr. LALLAH said that if the first sentence was dropped, as Mr. Kretzmer had suggested, the reference to article 18 would have to be incorporated in the second sentence, which, in his view, should be amended to show that what was placed under the control of a woman's male relatives was not the whole of her religious practice but only certain aspects of it. If the first sentence was maintained, it would have to be redrafted more carefully; in some religious systems, the right to choose one's own religion was not recognized for either women or men. Like previous speakers, he was perplexed by the third sentence of the paragraph. As to the last sentence, he thought that it should be maintained in slightly modified form, States being requested to inform the Committee of any measures they had taken to ensure equality and non-discrimination for women in the exercise of rights under article 18.

9. Mr. AMOR said that the rights set forth in article 18 were absolute rights which applied equally to women and men. Any individual wishing to change his or her religion or beliefs could do so without authorization from anyone else. In that sense, the sentence relating to restrictions should not be too difficult to formulate. The problem, as he saw it, concerned the status of women within their own religion, which was not a favourable one in all religions. The ban on the ordination of women priests under Roman Catholicism was a case in point; the religion-based prohibition of abortion and contraception in many countries was another. Some religious groups, such as the Mormons in the United States, allowed polygamy, which was clearly a discriminatory practice. Accordingly, the greatest caution was called for in distinguishing between the rights deriving from article 18 of the Covenant and the status imposed on women by their own religion, which sometimes amounted to persecution.

10. Mr. ANDO said that he was prepared to endorse the first sentence as amended by Ms. Evatt. The second and third sentences should be made clearer by means of concrete examples. In some Buddhist sects there were places which only men could enter; that, in his view, was an example of a religious practice which infringed a right under the Covenant, namely, the right to freedom of movement. He endorsed the amendments to the last sentence proposed by Ms. Evatt, Mr. Yalden and Mr. Lallah.

11. Mr. LALLAH wondered whether Mr. Amor, whose comments he had found particularly illuminating, might not be entrusted with preparing a new draft of paragraph 16 that would be more substantial than the present text and would, at the same time, avoid certain pitfalls.

12. The CHAIRPERSON, on behalf of the Committee, requested Mr. Amor to prepare a new draft of paragraph 16 for discussion in plenary.

13. Mr. AMOR agreed.

14. Mr. KRETZMER said he hoped that the new draft would cover the separate issues of freedom of religion, and the effect of religious values on the right of women to equality and non-discrimination.

15. Ms. EVATT thought that the present draft already dealt with both those points, albeit in abbreviated form. A little broadening out might suffice; she saw no need for extensive redrafting.

16. The CHAIRPERSON took the view that a redraft, though not necessarily extensive, was called for in order to take account of all points raised during the discussion. Before referring the paragraph to Mr. Amor, she invited members to decide whether the last part of the last sentence should be amended in accordance with the suggestion made by Mr. Lallah ("inform the Committee of measures they have taken to ensure equality and non-discrimination of women in the exercise of their rights under article 18").

17. Lord COLVILLE supported the amendment. The Committee would benefit from hearing not only about permissible restrictions, but also about those which contravened women's right to equality and non-discrimination.

Paragraph 17

18. Ms. CHANET, referring to the first subparagraph, said she had reservations concerning the minimum age for marriage. The important criterion, for both boys and girls, was that they should have reached the age of maturity, which was not necessarily the same for both sexes. The reference to "free and full consent to marriage" in the second sentence was, in her view, too laconic; in some countries girls were not asked to give their consent at all, marriages being arranged by the parents. Greater emphasis should be placed on the need for the woman to express consent herself. The example given in the third sentence was, in her view, too marginal and should be replaced by another. The whole subparagraph should essentially be oriented towards the notion of consent.

19. Mr. LALLAH, agreeing with Ms. Chanet, said that while the Covenant established the freedom of States parties to determine the reasonable age of marriage, that age was linked to mental and physical maturity. He personally believed that the age should be different for boys and girls. In any event, it was unacceptable that girls aged 12-14 should enjoy freedom of consent.

20. There were those who believed that the religious freedom guaranteed by the Covenant was tantamount to liberty to act according to the dictates of any religion. The Committee had previously ruled that a culture could not be invoked in order to derogate from a Covenant right. The Committee should, however, indicate that freedom of religion must not jeopardize the enjoyment of other rights.

21. Ms. EVATT proposed that the third line of the paragraph should read: "women and the age should be such as to ensure that women are able to give their free and full consent to marriage", and that the term "female children" in the fourth line should be replaced by "young females". She further proposed requesting States parties to report on legislation that allowed consent to be given by a third party, sometimes merely as a formality, but

sometimes legally and formally. In that case, she would agree with Ms. Chanet that the request for information on laws establishing marriage as an extenuating circumstance in rape or sexual abuse could constitute a totally separate point. Moreover, the Committee should firmly signal that such laws might negate the right to give free and full consent, as was indeed their purpose.

22. Mr. AMOR said his principal concern was that the age of marriage should be the age of maturity when free consent was feasible, and below which marriage could be contracted by neither boys nor girls.

23. His second observation concerned both article 23, paragraph 1, and article 18. The former provided for protection of the family by society and the State, which could be ensured through marriage or the dissolution of marriage. In that connection, he cited the case of an Egyptian academic at Cairo University and a specialist in the interpretation of the Koran. His research had been so critical of Islam that not only had he been denied a professorship, but a group of extremists, invoking Islamic law, had pronounced him non-Muslim and, therefore, not entitled to marry a Muslim. Despite the couple's insistence that they were both Muslims and did not want a divorce, the dissolution of the union had been declared by three courts in succession, forcing the couple into exile in order to preserve their marriage.

24. Although the Code of Civil Procedure had later been amended to stipulate that only a person directly involved could initiate divorce proceedings, the Procurator of the Republic was still empowered to dissolve a marriage between a non-Muslim woman and a Muslim man, in flagrant breach of article 23. He proposed that a reference to that situation should be included in the general comment.

25. The CHAIRPERSON suggested that a general comment on article 3 might not be the appropriate place for such a reference.

26. Lord COLVILLE said that while he had doubts about Mr. Amor's last point, it helped illustrate one of his reservations, which were underscored by Mr. Lallah's remarks. A country with a homogeneous population could require that its laws must ensure that all persons consented before they married. Mr. Lallah's reference was to the link between that sort of provision under article 23 and the position of people belonging to minorities, as covered by article 27.

27. As an illustration of the problem confronting minorities, he cited the situation in his own country, which was certainly not unique. Arranged marriages posed a major problem in the United Kingdom, which had a large population originating in south Asia and not all women whose marriages were arranged were sufficiently strong-minded to object. If they did so, however, the legal procedures and judicial powers were perfectly adequate to protect them. Indeed, the British courts had recently issued injunctions against the arranged marriage of girls celebrated in India, and they had been respected by the Indian Government. However, there was no legislation in the United Kingdom that automatically provided such protection. Unless the girl

availed herself of that recourse, she would be married without her consent. Girls who had refused and had instead married someone not chosen by their families had even been murdered by other family members.

28. The Committee should reflect on how a national jurisdiction ensured genuine consent for marriage by persons belonging to minorities. The general comment might request States parties to report on how their laws addressed that type of situation.

29. Mr. SCHEININ said that he could endorse the draft as it stood and leave until the discussion of paragraph 21 the issue of minorities, women and religion, which would require more sensitive treatment, in the light of paragraph 18. He agreed that the age of maturity varied, but women often lived in societies and religions that made them vulnerable and so in need of special protection. He therefore supported Ms. Evatt's first proposal, although he would delete the specific reference to women.

30. The CHAIRPERSON agreed that the subject of minorities should be deferred until discussion of paragraph 21.

31. Mr. SOLARI YRIGOYEN said that the first subparagraph dealt mainly with an equal minimum age of marriage for men and women. However, the idea of equality had been abandoned in the second sentence, which referred to women giving their free and full consent. While it was obvious that they should, he was concerned about the situation of men in certain religions or societies where arranged marriages deprived them too of their free consent. Since it was the civil and political rights of all persons that were under discussion, it should be pointed out that men too should enjoy expression of their full and free consent to marriage. Although he was aware that women were more often the victims of inequality, men were also victims in some societies.

32. With regard to Mr. Scheinin's suggestion that the specific reference to women should be deleted from Ms. Evatt's proposal, he said that while the minimum age of marriage should be the same for both sexes, the Committee on the Rights of the Child employed the term "child" for persons up to the age of 18. The Human Rights Committee should perhaps follow the practice of a United Nations Convention that had been ratified by nearly all countries.

33. Ms. EVATT agreed with Mr. Scheinin that the second sentence should be read so that it did not refer specifically to women, which would also meet the concerns of Mr. Solari Yrigoyen. In any event, the focus should still be on young girls, or young boys if need be. Most importantly, some reference should be made to laws that restricted a woman's right to marry someone of a different religion, a point that had been raised during consideration of the fourth periodic report of Morocco, where Muslim women were prohibited from marrying non-Muslims. Admittedly, both parties were affected if a marriage was proscribed, but the specific purpose of the law was to restrict the right of the woman. It was important that such a reference should be made in either paragraph 17 or 16.

34. Mr. HENKIN said that article 3 dealt with equality as such, while the Committee was dealing in paragraph 17 with freedom of consent in particular, and with equality of consent. It had been generally acknowledged that

maturity, implicit in the notion of freedom of consent, was the desired threshold. He concurred with Ms. Evatt that age, which was not subject to manipulation, was the safest, if not the only gauge of maturity. But even age could be subject to some notion of maturity, and that was the controversial and most difficult part of the Committes's undertaking. The problem with age as the sole measure of maturity was that it involved traditions and stereotypes which were not wholly reliable. He would therefore prefer to start with maturity based on age, and seek some formulation that protected both men and women who had reached the chronological age but were not, in fact, mature enough to refuse marriages they were not consensually in a position to contract. The Committee was moving in the right direction and he looked forward to the final draft.

35. Mr. AMOR, supported Ms. Evatt's position on marriage between a Muslim woman and non-Muslim man, which was not peculiar to Morocco, but affected innumerable young women elsewhere, some of whom lived intolerable lives. It was important that some mention should be made of that phenomenon.

36. Mr. ANDO expressed reservations about setting the same marrigeable age for girls and boys, although he would be more inclined to raise the age for girls to that for boys, rather than reduce the age for boys to that of girls. The important point was freedom of consent of girls who possessed the mental and physical maturity to make such a decision, and no customary law should preclude them from doing so. That was the crucial point of paragraph 17, and girls should not be discriminated against in that regard. If that point was clearly stated, the first subparagraph would have achieved its purpose.

37. The CHAIRPERSON reminded the Committee that it had often declared men and women to be equal.

38. Ms. CHANET said that while that remark had been made by Committee members in their concluding observations, the Committee had said the opposite in its general comment on article 23. The Committee would be well advised not to contradict itself in its various general comments. Its general comment on article 23 had dealt with such problems as forced or arranged marriages, which also affected men. What was currently at issue was the link between articles 3 and 23. It should therefore focus on the problem of obstacles to the free consent of women and girls, when consent was given by their parents or representatives. She agreed by and large with Ms. Evatt's proposed amendment in that regard, but not on an equal age for women and men. Ms. Evatt's proposal could also settle the problem of rape, by requesting countries to explain their legislation covering the rape or sexual abuse of minors, indicating how it affected marriage and whether marriage constituted an extenuating circumstance for the crime of rape.

39. Lord COLVILLE considered the word "allowing" in the fourth line of the English text to be too general. What was at issue was the power to prohibit the marriage of young persons. Such prohibition took many forms, some of them absolutely permissible. Those were matters for the individual State party to explain. While he acknowledged that the ethnic situation properly belonged under article 27, the phrase "power to prohibit" would introduce the whole

question of how people belonging to a certain religious group might wish to deal with the marriage of their children and direct States parties' attention to a range of issues, some of which might be perfectly respectable while others might be deemed objectionable.

40. Mr. ZAKHIA said the problem of age should be handled with caution, since equality was different from identity. For there to be equality, the State must establish a minimum age which, whether or not the same for boys and girls, depended on psychological and physiological considerations. The Committee's logic would seem to require that a single marriageable age should pertain throughout the world. The interpretation of the Covenant which suggested such a solution was erroneous: first, because there was no general agreemeent on the subject, and second, because age was a highly controversial issue. One solution might be to say that the same criteria should be used for determining the age of marriage for men and women.

41. Mr. YALDEN said he had no problem in accepting that the minimum age for marriage should be the same for women as for men. However, for the Committee to make a categorical assertion to that effect in one of its general comments was another matter, and he did not think there was any need to go so far. The essential point was that the persons concerned should be old enough to consent freely and fully to the marriage, and that could be made clear by using the language of article 3, paragraphs 2 and 3, along the following lines: "This implies that the marriageable age for both men and women should be such that they are able to give their free and full consent to the marriage". The Committee should not be put in the position of having to decide for all States parties the very complex social issue of what constituted marriageable age.

42. Mr. KLEIN said he shared Ms. Chanet's concerns. The Committee should clearly state, as a matter of principle, that a minimum age allowing free and full consent to marriage was valid both for men and for women. It could then ask States to report on their rules in that regard, including any differences between men and women which might not be in compliance with the Covenant.

43. The CHAIRPERSON considered that it would be very difficult for a State to make a differentiation in age that would be reasonable and objective. The traditional grounds for making the differentiation had been that women matured earlier, whereas men needed more time to prepare for earning a living, but thinking on the matter had since evolved. The main thrust of the first subparagraph of paragraph 17 should be the concept of full and free consent, and specific examples should be given of situations where such consent was lacking.

44. On the point raised by Lord Colville, she observed that the issue of protection against forced marriages should be distinguished from the issue of protection of minorities.

45. Ms. EVATT recalled that the Committee had already committed itself to the view that marriageable age should be the same for women as for men.

46. Lord COLVILLE, clarifying the suggestion he had made earlier, said he supported the idea that States should review their laws and practices. In

response to the point made by Mr. Solari Yrigoyen, he observed that the example given should not be confined to females or to children as defined under the Convention on the Rights of the Child. It could be that some States would wish to have powers of intervention restricted to a lower age.

47. Powers to prohibit marriage were of two kinds: first, intervention by the judicial authorities, and secondly, intervention by the parents. The paragraph would not need to refer specifically to minorities, although it would be understood to cover parents from minority groups. His suggestion was that the State party should inform the Committee what powers it had in the matter, so that the Committee could then decide whether they were beneficial or objectionable.

The meeting was suspended at 11.45 a.m. and resumed at 12.10 p.m.

48. The CHAIRPERSON invited comments on the second subparagraph of paragraph 17.

49. Mr. KLEIN said he had difficulty with the second sentence. A marriage could end either by divorce or death: the case of divorce was dealt with in the third subparagraph, but in the case of death inheritance laws would come into play. The text should convey the idea that married women had the right to inherit; the wording "and do not lose ownership when the marriage ends" did not make that sufficiently clear.

50. Mr. LALLAH suggested the formulation "and have equal rights with their husbands to property on the dissolution of the marriage".

51. Mr. KRETZMER pointed out that the end of the first sentence should read "or property in the sole ownership of one of the spouses", instead of "or property in the sole ownership of the woman".

52. Lord COLVILLE said he feared it might be going too far to require that, on the dissolution of a marriage, the whole of the property should be equally divided between the spouses: that was normally a matter for the courts to decide.

53. Mr. AMOR pointed out that where inheritance was concerned, the regime applied in certain countries and regions did not operate in the woman's favour. In Islam, for example, a husband had the right to inherit from his non-Muslim wife, but a non-Muslim wife did not have the right to inherit from her Muslim husband. That situation should be taken into account, perhaps in a separate paragraph.

54. Mr. HENKIN, on the point raised by Mr. Kretzmer, proposed that the end of the first sentence should read "and the ownership or administration of property, whether common property or property solely owned by either spouse".

55. Mr. SCHEININ supported that proposal. Property regimes varied from country to country, and it could not be assumed that they all included the notion of common ownership. He suggested that the second sentence should read

"States should review their legislation to ensure that married women have equal rights in the administration of property and do not lose ownership when the marriage ends".

56. Mr. LALLAH suggested that in order to cover the point raised by Mr. Amor, wording along the lines "without discrimination on the grounds of marriage to a person of a different faith" should be added at the end of the second sentence.

57. The CHAIRPERSON said that, in her view, it would be more appropriate to include that wording in the third sentence of paragraph 16, since it related more to article 18 than to article 23.

58. Lord COLVILLE, referring to Mr. Lallah's earlier proposal, said he thought the formulation "shall have equal rights with their husbands to property on the dissolution of the marriage" was too broad: he would prefer "shall have the opportunity to obtain equal rights on the dissolution of the marriage". The Committee could not insist that in every instance women should be given equal rights to property, whatever the rulings of the court or the wishes of the family might be.

59. The CHAIRPERSON considered that the phrase "the opportunity to obtain equal rights" was inadequate.

60. Mr. LALLAH said he took it that what Lord Colville had had in mind was that some legal systems recognized marriage contracts, freely entered into by both spouses, under which property was not disposed of equally. Since such arrangements would be arrived at by the consent of both parties, he was not sure whether or not they would constitute a violation of the Covenant.

61. Mr. AMOR said that matrimonial regimes varied tremendously among countries, but the paragraph should be worded to highlight those that constituted discrimination between men and women. The Muslim marriage regime, for example, provided for completely separate administration of the property that was in the hands of each spouse before marriage. Property acquired during marriage was, in many systems, administered jointly, but there was also the possibility of separate administration of commonly acquired property. Often the arrangements were consolidated in contracts under civil law and discrimination was the only ground on which they could be challenged. The paragraph should be amended to include references to ways of combating discrimination without jeopardizing the right of both spouses freely to dispose of their property when contracts concerning the property of the spouses were concluded under civil law.

62. The CHAIRPERSON said that everyone appeared to agree on that point, but if Mr. Amor considered that there was a way of wording the point better, she would welcome a specific proposal.

63. Mr. KLEIN pointed out that the third subparagraph dealt with dissolution of marriage. Perhaps equality of rights during the duration of marriage could be covered in the second subparagraph, while the consequences of dissolution, either by death or divorce, and ways of ensuring equal rights in such situations could be addressed in the third subparagraph.

64. Ms. CHANET endorsed the views expressed by Mr. Amor and Mr. Klein. Contract law in different countries varied to such a degree that it was impossible to specify where and how the rights of women were best respected. Some matrimonial regimes, for example, discriminated against the surviving spouse, whether it was a man or a woman. All the Committee could do was to require a State not to discriminate against married women in its contract law and in practice. The second subparagraph should be reworded to concentrate on the rights of the spouses during marriage and to state that spouses should have equal rights in the administration of property acquired in common and that property held separately by either spouse must be administered exclusively by the owner.

65. The CHAIRPERSON observed that the reference to property in the sole ownership of the woman was derived from State party reports. In some countries like Chile, property belonging exclusively to the wife was under the husband's administration.

66. Mr. LALLAH pointed out that residence rights were important because of the length of time often required to obtain nationality. He suggested that a reference to residence rights should be included in the third sentence, following the words "acquisition or loss of nationality", and that the phrase "as stated in general comment 19 of 1990" should be deleted since that general comment did not mention residence rights.

67. It was so decided.

68. The CHAIRPERSON said that with those amendments, and if there was no objection, she would take it that the Committee wished to adopt the proposal to focus in the second subparagraph on the situation during marriage, and in the third subparagraph on the situation after marriage, and to incorporate the following amendments proposed during the discussion: in the first sentence, the words "administration of common property or property in the sole ownership of the woman" would be replaced by "ownership or administration of property, whether common property or property in the sole ownership of either spouse"; in the second sentence, the phrase "share the administration of common property and do not lose ownership when the marriage ends" would be replaced by "have equal rights in the administration of property".

69. It was so decided.

70. The CHAIRPERSON invited members to comment on the third subparagraph of paragraph 17.

71. Ms. EVATT said she took it that the paragraph would address equality of rights upon the dissolution of a marriage, whether by death or divorce, and would include a reference to inheritance as previously discussed. The phrase "the right of visit to children by the non-custodial parent" should be amended to read "the need to maintain contact between children and the non-custodial parent". The phrase "based on equal considerations" should be replaced by "based on considerations which do not discriminate between men and women".

72. Mr. HENKIN said that he endorsed the second amendment proposed by Ms. Evatt.

73. Ms. CHANET said that not only divorce but also repudiation should be covered in the third paragraph. In many countries, both options were available, but repudiation was not comparable to divorce because it comprised the unilateral severance of the marriage bond.

74. The CHAIRPERSON suggested that annulment, too, should be mentioned.

75. Mr. AMOR agreed and said that polygamy should perhaps also be mentioned.

76. Ms. EVATT pointed out that, in the concluding observations mentioned in the footnote to the first sentence, the Committee had already expressed the view that polygamy was a form of discrimination.

77. Lord COLVILLE suggested that the word "divorce", when used for the first time in the first sentence, should be replaced by the phrase "dissolution of marriage".

78. Mr. SOLARI YRIGOYEN requested clarification as to whether the need to guarantee the domicile of children was covered. Press reports frequently described situations when the non-custodial parent took a child to a far-off country with very different customs, laws and religions from those of the child's habitual domicile. That clearly undermined the rights of the custodial parent.

79. The CHAIRPERSON considered that Ms. Evatt's amendment should cover the concern expressed by Mr. Solari Yrigoyen.

80. Subject to drafting amendments to include references to inheritance rights, repudiation and annulment, she suggested that the third subparagraph should be adopted, with the amendments proposed by Ms. Evatt and Lord Colville.

81. It was so decided.

Paragraph 18

82. Mr. ANDO said that in the first sentence the phrase "on equal terms" was far too vague, although the second sentence made it clear what sort of equality was meant.

83. Mr. HENKIN agreed and suggested that the phrase should be replaced by the words "equally for boys and girls".

84. It was so decided.

85. Ms. CHANET, referring to the third sentence, said that the French version of the phrase "Particular care should be exercised to eliminate" was much too weak.

86. The CHAIRPERSON agreed but said it was not simply a problem of the French version; she suggested that the phrase should be replaced by the words "States must eradicate".

87. It was so decided.

88. Mr. AMOR said that, in the French version of the final sentence, the phrase "mutilation génitale des femmes" should be amended to read "mutilation génitale des filles". The phrase "devdasi, kuzariva, ngosi" enumerated certain religious and cultural practices that jeopardized the freedom and well-being of female children, but not all such practices. A more general reference would be preferable.

89. The CHAIRPERSON said that the list was not meant to be exhaustive; explanatory footnotes could be added.

90. Mr. ANDO proposed that, in the third sentence, the words "educational campaigns" should be replaced by "any other appropriate measures".

91. It was so decided.

92. Mr. SOLARI YRIGOYEN said that the Spanish term "obstaculizan" was weak as a translation of the English word "jeopardize". It was particularly inappropriate as a description of the effect on human rights of female genital mutilation, which currently affected 135 million girls throughout the world.

93. Ms. CHANET pointed out that neither in paragraph 7 of the draft, which referred to article 6 of the Covenant, nor in paragraph 18 was there any reference to the killing of girls at birth simply because they were girls. That omission should be rectified.

94. The CHAIRPERSON said that the reference in paragraph 7 to "prenatal sex selection and infanticide" would be expanded.

95. Mr. AMOR said that a sentence or two should be included to cover the African phenomenon whereby women were inherited upon the death of their spouse.

96. The CHAIRPERSON said that would be done. If there was no objection, she would take it that the Committee wished to adopt paragraph 18, as amended.

97. It was so decided.

The meeting rose at 1.05 p.m.